

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, ex rel. W.A. DREW  
EDMONDSON, in his capacity as ATTORNEY GENERAL  
OF THE STATE OF OKLAHOMA and OKLAHOMA  
SECRETARY OF THE ENVIRONMENT C. MILES TOLBERT,  
in his capacity as the TRUSTEE FOR NATURAL  
RESOURCES FOR THE STATE OF OKLAHOMA,

Plaintiffs,

v.

TYSON FOODS, INC.; TYSON POULTRY, INC.; TYSON  
CHICKEN, INC.; COBB-VANTRESS, INC.; AVIAGEN,  
INC.; CAL-MAINE FOODS, INC.; CAL-MAINE FARMS,  
INC.; CARGILL, INC.; CARGILL TURKEY PRODUCTION,  
LLC; GEORGE'S, INC.; GEORGE'S FARMS, INC.;  
PETERSON FARMS, INC.; SIMMONS FOODS, INC.; and  
WILLOW BROOK FOODS, INC.,

Defendants.

Case No. 05-CV-0329 JOE-SAJ

**DEFENDANTS' OBJECTION TO PLAINTIFFS'  
DESIGNATION OF COMPLAINT AS "RELATED CASE"**

Defendants object to Plaintiffs' unilateral designation of the Complaint as constituting a "related case" to a case from four years ago.

**SUMMARY**

This Court is not bound by rule or statute in determining whether one case is related to another. Here, Plaintiffs nominated their lawsuit as "related" to a suit filed four years prior, apparently because both suits involve allegations targeting poultry. That is where the similarities end, however. Because the two lawsuits are not related in a substantive or meaningful way, Defendants ask that Plaintiffs' designation on the face of the Complaint of a "related case" be stricken.

## ARGUMENT

No federal rule or statute governs this Court's determination of what constitutes a related case. Reported cases from other jurisdictions that have considered designation of a case as "related" relied upon applications of specific criteria established by local rule to determine whether the designation is appropriate, on a case-by-case basis. *See, e.g., Assiniboine and Sioux Tribe of Fort Peck Indian Reservation v. Norton*, 211 F.Supp.2d 157 (D. D.C. 2002) (evaluating designation in context of local civil rule 40.5(a)(3)); *Tripp v. Executive Office of the President*, 194 F.R.D. 340 (D.D.C.2000) (evaluating designation in context of local civil rule 40.5(a)(3)); *Tripp v. Executive Office of President*, 196 F.R.D. 201, D.D.C. 2000 (same); *U.S. v. Kasman*, 1993 WL 278440 (E.D.N.Y. Jul 20, 1993) (evaluating non-designation in context of local rule 50.3); *Collins v. Pension Ben. Guar. Corp.*, 126 F.R.D. 3 (D.D.C. 1989) (evaluating designation in context of local rules 40.5(A)(3) and (A)(4)).

One reported case sustained a designation of a later case as "related" to an earlier case despite the absence of a local rule establishing specific factors for consideration. *Obert v. Republic Western Ins. Co.*, 190 F. Supp. 2d 279 (D. R.I. 2002).

The District of Rhode Island utilizes a local rule similar to this Court's Local Civil Rule 3.1: a plaintiff must complete a civil cover sheet at the time of filing. In Rhode Island, as here, the civil cover sheet includes an area to identify related cases. *Id.* at 287-88. The *Obert* court was asked to strike a designation of "related case" in a lawsuit involving a car wreck because the moving party believed that the case had been improperly judicially reassigned due to the designation. The court denied the motion, finding that reassignment of the case was proper, in view of the relationship of the case to prior cases:

Both lawsuits stemmed from the same incident and involved the same parties. Most importantly, the 1994 action concerned the payment of the judgment entered in the 1987 action. The instant action, too, concerns the payment of the judgment entered in the 1987 action. All three cases are related.

*Id.* at 289. The *Obert* court found that an action over a car wreck was related to two actions arising out of the payment of the judgment in the car wreck lawsuit.

Without a local rule providing procedures or guidelines for determining whether a closed lawsuit is a "related case," this Court should review the characteristics that distinguish this lawsuit from the proposed "related case." If a significant number of elements of the current lawsuit differ from the cited closed case, the designation of related case should be stricken.

The significant differences between State's lawsuit and the closed lawsuit involving the City of Tulsa include:

- The Tulsa lawsuit concerned solely the suitability of water for drinking purposes. The State's lawsuit raises concerns about drinking water, but that is just one of a diverse array of concerns. The State also alleges that fish propagation has been or will be harmed, as well as wildlife propagation, "aesthetic values," "floating (canoes, kayaks and rafts), fishing, camping, swimming diving, hiking and sightseeing." Complaint, ¶¶ 25, 27.
- The Tulsa lawsuit addressed a geographic area of 265,600 acres. The State puts at issue conduct occurring across 1,069,530 acres, nearly half of which exists in another state.
- The Tulsa lawsuit named six poultry companies as defendants, as well as a city, Decatur. The State chose to file suit only against companies it believes are involved in poultry production, and already it has named 14 defendants – twice as many as in the Tulsa case. This means that many of the parties to the State's lawsuit have no history or relationship to the "related" case.
- The Tulsa lawsuit was based on the City's contractual entitlement to a fixed quantity of water for municipal supply purposes; the State alleges standing on a variety of contested theories, including ownership of "the beds of navigable rivers," "all waters running into definite streams," and "all natural resources, including the biota, land, air and waters" within Oklahoma." Complaint, ¶ 5.

- The Tulsa lawsuit was limited to recovery of damages for diminution of water quality for water used as a drinking supply. The harm alleged by the State includes "injury to the IRW, including the biota, lands, waters and sediments therein." Complaint, ¶¶ 3, 4, 6 through 19. The State further alleges injury to "natural resources" such as "land, fish, wildlife, biota, air, water, ground water, drinking water supplies and all other such resources...." *Id.* at ¶¶ 84 through 87, 89.
- Unlike the Tulsa case, the State alleges that the IRW is contaminated with an array of substances including elements and compounds of nitrogen, arsenic, zinc, copper, hormones, and microbial pathogens. Complaint, ¶¶ 62, 70, 74, 80, 83. The State alleges or implies that the Defendants are responsible for causing cancer in residents of Oklahoma and/or Arkansas, as well as illnesses of the gastrointestinal tract, the cardiovascular system, blood, the liver, the lungs, skin, and the nervous system. *Id.* at ¶ 62. Likewise, the State alleges or implies that the IRW is contaminated with hormones that adversely impact fish reproduction. *Id.* at ¶ 63. Further differentiating itself from the "related" case, the State implies that Defendants caused illness among "human beings and biota" due to the presence of "e. coli and other coliforms, campylobacter, enterococci, yersinia, clostridium, salmonella and staphylococcus" in poultry waste. *Id.* at ¶ 64.

### CONCLUSION

The State's lawsuit differs substantially from the Tulsa lawsuit on such basic concepts as standing, geography, defendants, injury and damages. The Tulsa lawsuit addressed the quality of Tulsa's drinking water, while the State's lawsuit alleges that a variety of chemical compounds and heavy metals have harmed all of the "biota" throughout the entire watershed. The only similarity to the two lawsuits is their villification of poultry litter's role in supporting agriculture.

Because the State alleges damages against different defendants for causing different kinds of harm in a different geographic region, the cases are not related. The designation of related case should be stricken.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on the \_\_\_\_ day of October, 2005, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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I also hereby certify that I served the attached document by United States Postal Service, proper postage paid, on the following who are not registered participants of the ECF System:

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